

CHAPTER 5 FIRE MARSHAL

[Ch 5 as appeared in July 1974 IDR Supplement, rescinded June 30, 1975]
[Prior to 4/20/88, Public Safety Department [680] Ch 5]

GENERAL PROVISIONS

661—5.1(100) Description. This division's charter is to prevent fires. Fire causes are determined and communicated to the public by various means including the division's annual report. The division requires building standards necessary for fire safety and apprehends those who violate such standards or fire-related criminal statutes.

5.1(1) The division's administrator is entitled the state fire marshal. The fire marshal has one assistant. The nonclerical employees of this division are peace officers designated as special agents, fire prevention inspectors, fire prevention specialists, and designated subordinates.

5.1(2) Special agents examine a fire or a fire scene to determine its cause, and arrest any who unlawfully cause fires or violate fire-related laws.

5.1(3) Inspectors examine buildings to determine the compliance of its system with applicable laws or rules.

5.1(4) A fire prevention specialist examines blueprints and specifications of proposed buildings.

5.1(5) Variance from rules. Rescinded IAB 10/31/01, effective 1/1/02.

661—5.2(17A,80,100,101,101A) Definitions. The following definitions apply generally to the provisions of this chapter unless a specific exception is made with reference to a particular rule or sequence of rules within the chapter.

"Basement" means a usable or unused floor space not meeting the definition of a "story."

"Building" is any structure used for or intended for supporting or sheltering any use or occupancy. Each portion of a building separated by one or more area separation walls with a fire-resistive rating of at least two hours may be considered a separate building.

"Corridor" means an enclosed exit access component that defines and provides a path of egress travel to an exit.

"Fire" includes explosions in which fire, combustion or rapid oxidation is an element but does not include explosions caused by nonflammable gases, liquids or other materials.

"Fire marshal" means the fire marshal, the assistant fire marshal, fire prevention inspectors, special agents, fire prevention specialist and designated subordinates.

"Fire marshal's office" means the headquarters of the fire marshal.

"NFPA" means the National Fire Protection Association, Batterymarch Park, Quincy, MA 02269. References to the form "NFPA xx," where "xx" is a number, refer to the NFPA standard or pamphlet of the corresponding number.

"Owner" (For service of notice, criminal sanctions and penalties.) If a building is owned by a corporation, the chairperson or president of the board of directors is considered the owner. If a building is owned by an organization governed by a board of trustees, the president or chairperson of the board is considered the owner. If a partnership is shown to be the owner of a building, any partner is considered the owner. If an individual is shown to be the owner, the individual, or the guardian or conservator of such individual is considered to be the owner. If the building is shown to be owned by a trade name, the person who registered the trade name is considered the owner.

"Story" means that portion of a building included between the upper surface of any floor and the upper surface of the floor next above, except that the topmost story shall be that portion of a building included between the upper surface of the topmost floor and the ceiling or roof above. If the finished floor level directly above a usable or unused underfloor space is more than 6 feet above grade for more than 50 percent of the total perimeter or is more than 12 feet above grade at any point, such usable or unused underfloor space shall be considered as a story.

661—5.3(17A) Building plan approval. The proposed construction of some buildings or additions, alterations or changes to existing buildings need the approval of the fire marshal and the fire marshal's approval may be obtained, if requested, on nonsingle family dwelling buildings. The procedure of this rule will apply unless inconsistent with a procedure in any of the rules which follow.

5.3(1) An initial evaluation or review by the fire marshal may be obtained on preliminary plans by submitting the plan that shows the building outline with rooms, corridors and exits indicated. The fire marshal informally responds to such preliminary plan.

5.3(2) Building plan submittals.

a. Working plans and specifications. When approval of building construction projects is required by this chapter or when requested by the submitter for other building construction projects covered by this chapter, one complete set of the final working plans and specifications shall be submitted to the fire marshal's office. The submittal shall comply with Iowa Code chapters 542B and 544A. The submittal is examined and submitter is notified of the findings. If the working plans and specifications comply with this chapter, an approval letter shall be sent to the submitter.

b. Shop drawings. Shop drawings, equipment specifications and supporting documentation for fire alarm and sprinkler systems may be submitted for review and approval. If the system is being installed as part of a project which has been designed by an engineer or architect, the submittal shall be approved by the responsible architect or engineer prior to submittal to the fire marshal. The submittal is examined and submitter is notified of the findings. If the submittal complies with the applicable standards, all copies are stamped approved and one copy is retained and the other copies, if any, are returned to the submitter. If only one copy of shop drawings, equipment specifications and supporting documentation is received, a letter shall be sent to the submitter in lieu of returning approved shop drawings.

c. Changes. No changes shall be made to the approved final working plans and specifications or shop drawings unless the changes are submitted to and approved by the fire marshal's office.

EXCEPTION: Submittal of working plans and specifications or shop drawings is not required when the plans and specifications or shop drawings have been reviewed for compliance with this chapter by the chief, or an employee authorized by the chief, of a fire department organized under Iowa Code chapter 400.

NOTE: Building, planning and design services are required to be in conformance with Iowa Code chapters 542B and 544A.

5.3(3) If the blueprints and specifications are not acceptable, the fire marshal's office specialist notifies the submitter of the deficiencies and requests that the submitter either forward changes or request a review of the blueprints and specifications with the specialist.

5.3(4) If, after such review, the submitter disputes the specialist's findings, the submitter may request that the disputed questions be referred to the national fire protection association or other similar generally recognized authority, at the submitter's expense, and the specialist submits the blueprints and specifications to the national fire protection association or other similar generally recognized authority for their analysis.

5.3(5) If the submitter disputes the findings of the national fire protection association, the submitter may appeal to the fire marshal under the procedures of 661—Chapter 10.

661—5.4(17A,100,101,101A) Inspections. Certain buildings as designated in the Iowa Code shall comply with the Iowa Code and fire safety rules. The fire marshal determines and enforces such compliance. To do so, the fire marshal may enter such building or premises at any time without notice to inspect it.

5.4(1) Such inspection may be of a particular system in the building. For example, the electrical, heating, exit, valve, piping and venting systems may be inspected. The inspection may include the entire building. For example, the building may be so dilapidated as to be especially liable to fire.

5.4(2) Such inspection is conducted by the fire marshal or by a consultant as requested by the fire marshal. A consultant would be a person with the necessary degree of training, education or experience to examine a system within a building required to be in compliance with the law or rules and determine if such system or systems is in compliance with such requirements.

5.4(3) Inspections are conducted without announcement and occur on a random basis, upon anyone's request, upon any complaint or when fire appears to be possible. For example, the presence of flammable liquids or gases or the odor thereof outside a building storing such gases or liquids may cause an inspection.

5.4(4) When the member or consultant arrives at the building that is to be inspected, the member or consultant usually advises the owner. If a person in such a position cannot be contacted, the inspection commences anyway. If the owner or representative wishes to accompany the member or consultant, they may do so, but the inspection is not delayed.

5.4(5) The member or consultant examines the system or systems being inspected to determine compliance with the laws or rules. To guide the inspection, the member or consultant uses state rules or a manual recommended by the national fire protection association or a similar acceptable fire protection agency.

5.4(6) Upon completion of an inspection, the member or consultant completes written inspection orders. The original is filed in the fire marshal's office by county; a copy is filed in the member's office in a geographical area file; and a copy is left with the fire department having jurisdiction.

5.4(7) Upon completion of the inspection, if the building does not comply with applicable laws or rules, the member or consultant identifies specifically such noncompliance and notifies the owner. The owner may be ordered to correct or repair the deficiency or may order the building removed or demolished.

a. Copies of the notice of deficiencies or order are distributed to the fire marshal's office and the fire department having jurisdiction and a copy is filed in the member's office.

b. The time to comply with the order is determined by the member considering the likelihood of fires, the possibility of personal injury or property loss, the cost, availability of materials and labor to correct, repair, remove or demolish and other reasonable, relevant information.

c. If the owner of the building does not agree with the deficiency findings and order, the owner asks the fire marshal to review the order. The provisions of 661—Chapter 10 are then used.

d. Failure to comply with an order may incur penalties.

661—5.5(100) Certificates and inspection fees.

5.5(1) *Certificates for license.* Several Iowa statutes provide that a license to conduct certain functions cannot be issued until the fire marshal has approved the building to be used for such function. Upon receipt of a written request, the fire marshal conducts or has conducted an inspection using the procedures contained in the building inspection rule 5.4(17A,100,101,101A). Upon completion of an inspection showing the building to be in compliance, the fire marshal issues a certificate. If the building is found to be in noncompliance, the certificate applicant may file a petition requesting a review and the same procedure is used as if an order were being requested to be reviewed. Upon completion of the review process, if the building is found to be in compliance, a certificate is then issued.

5.5(2) *Inspection fees.* The following fees shall apply respectively to inspections of the facilities of the types listed where a certificate of inspection from the fire marshal is required in order to obtain licensure or certification under Iowa law. The inspection fee shall be paid by check made payable to "Fire Marshal Division, Iowa Department of Public Safety" prior to the issuance of the certificate provided for in subrule 5.5(1).

a. The inspection fee for a health care facility licensed or seeking licensure pursuant to Iowa Code chapter 135C or a group home licensed or seeking licensure in this state is \$2 per bed.

b. The inspection fee for an elder group home certified or seeking certification pursuant to Iowa Code chapter 231B or an assisted living facility licensed or seeking licensure pursuant to Iowa Code chapter 231C is \$7.50 per bed.

c. The inspection fee for an adult day services program certified or seeking certification pursuant to Iowa Code Supplement chapter 231D is \$50 per facility.

d. The inspection fee for a child care facility licensed or seeking licensure pursuant to Iowa Code chapter 237A is \$20 per facility.

e. When an initial inspection which requires a fee pursuant to paragraphs "*a*," "*b*," or "*c*" of this subrule results in a finding of a deficiency or deficiencies which require a reinspection, the initial reinspection shall be performed without the imposition of any additional fee. If the original deficiency or deficiencies have not been corrected at the time of the initial reinspection, then a fee of \$100 for each additional reinspection after the initial reinspection is required until the original deficiency or deficiencies have been corrected.

f. The fee for a suitability inspection of a prospective site for a facility which may seek licensure or certification from the state of Iowa is \$100.

This rule is intended to implement Iowa Code chapter 100 as amended by 2000 Iowa Acts, House File 2552.

661—5.6(17A,80,100) Fire investigations.

5.6(1) The fire marshal has the authority to investigate any fire in the state of Iowa.

5.6(2) City and township officers have the primary responsibility to and shall investigate fires. The city or township officer shall file a report of each fire with the fire marshal's office within one week of the fire even if the fire marshal's division participated in, assisted with, directed or supervised the fire investigation. Upon written request, the fire marshal may grant an extension of the time for filing this report for a period not to exceed 14 days. The request shall set forth compelling reasons for such extension.

5.6(3) The city or township officer shall immediately report a fire that involves death or suspected arson and does so by contacting the member assigned to that area or, if not available, the fire marshal's office or the fire marshal or assistant or, if no such contact can be made, the officer asks the county sheriff to relay the information to the Iowa police radio or teletype system (patrol communications division). The officer's report will be recorded or logged.

5.6(4) The notice of a fire involving death or arson contains the following information, if known:

a. If death has occurred or is suspected, the name, age and address of person or persons deceased or missing; the date, time and address of the fire; and the suspected cause of fire.

b. If arson is suspected, the date, time, address of the fire; the reasons for suspecting arson; whether there is obvious evidence of arson and if there is an arson suspect.

c. Whether an explosion occurred.

5.6(5) If Iowa police radio has been so notified, it immediately notifies the fire marshal or the nearest available member of the fire marshal's division.

5.6(6) The fire marshal may, while investigating the cause of a fire, compel witnesses and others to testify under oath and to submit books, records and other documents.

a. This is in the discretion of the fire marshal and may be exercised anytime, including fires that involve an extensive loss, a death, arson or explosion, or suspected arson.

b. The fire marshal may allow a person to submit to a polygraph examination.

5.6(7) The fire marshal notifies the person compelled to give testimony or information.

5.6(8) The fire marshal may assist a local officer in the investigation of any fire. The fire marshal may superintend, direct or conduct the investigation of a fire and may request the participation of a consultant when:

- a.* Requested by state or local authority to do so.
- b.* A death has occurred, an extensive amount of property has been destroyed, arson is suspected or an explosion has occurred.
- c.* A person is identified as an arson suspect.
- d.* There is obvious physical evidence of arson.
- e.* The fire marshal deems it necessary.

5.6(9) The fire marshal, when participating in the investigation of a fire, may request the person in control of the premises to execute a consent to search.

661—5.7(17A,101A) Explosive materials. Those wishing to receive an explosive materials commercial license may obtain a copy of the required application by contacting the fire marshal's office, sheriff's office or the office of the chief of police in cities of over 10,000 people.

5.7(1) Such application is submitted to the sheriff's office or office of the chief of police. That agency reviews the application, investigates the applicant, inspects the buildings, if necessary, and completes the application, then forwards it to the fire marshal.

a. If the application is approved, the fire marshal enters approval thereon, notifies the local agency, and issues the license.

b. Explosive materials commercial license expires on December 31 of each year and may be renewed.

c. If an application is denied, the applicant may appeal under 661—Chapter 10.

5.7(2) A person wishing to purchase, possess, transport, store or detonate explosive materials shall obtain a permit to do so from the county sheriff or the chief of police.

5.7(3) When a sheriff confiscates explosive materials, the sheriff shall give notice to the state fire marshal's office as soon as reasonably possible.

661—5.8(100,101,101A) Fire drills. All public and private school officials and teachers shall conduct fire drills in all school buildings as specified in Iowa Code section 100.31 when school is in session. All doors and exits of their respective rooms and buildings shall remain unlocked during school hours or when such areas are being used by the public at other times.

661—5.9(17A,100) Fire escapes. Upon receipt of a written communication from an owner appealing the action or requirement of any fire escape inspector that sets forth such action or requirement and the objections the owner has to the action or requirement of such inspector, the provisions of 661—Chapter 10 will apply.

661—5.10(17A,22,100,692) Public inspection of fire marshal files and fire records. The fire marshal's office keeps a record on file of every reported fire in Iowa. All other important written information gathered by the fire marshal also is filed. Most of the contents of these documents are available to the public. Some of the information contained in these files, such as investigative data, intelligence data or criminal history data, as defined in Iowa Code chapter 692, is not public record. Requests for information should be addressed to the Fire Marshal Division, Iowa Department of Public Safety, 401 S.W. 7th Street, Suite N, Des Moines, Iowa 50309.

5.10(1) A person may request to examine or copy a public record by either submitting a request in person or in writing. A person who plans to make a request in person to examine public records should first contact the office by telephone at (515)281-5821 to determine if personnel will be available to assist the person.

5.10(2) A copy will be provided on request of any public record in the possession of the fire marshal division at the expense of the person requesting the copy of the record. The fee for a copy of a record shall reflect only the cost of copying the record and the time required of staff of the department of public safety to retrieve the record, copy the record, supervise the copying of the record, and mail the record.

5.10(3) If a person wishes a copy of the record of a particular fire, it may be copied in the fire marshal's office or that person may so request by writing to the fire marshal's office setting forth the date, time and address, including county, of the fire. The fire marshal will forward a copy of the public record and may require reimbursement for the actual cost of copying and mailing the information.

661—5.11(17A,80,100) Information requested before inspection. Persons requesting the inspection of a building that is alleged to require repair, removal or demolition under Iowa Code section 100.13 shall provide the following information, if known: the address of the building; the name and address of the building's owner; the requester's name, address and telephone number; and a general description of the alleged deficiencies which the requester seeks remedied.

5.11(1) Initial determination. The fire marshal, upon receipt of the information, shall make an initial determination whether there are sufficient allegations to warrant an inspection.

a. If, in the fire marshal's opinion, the complaint fails to warrant conducting an inspection, the fire marshal shall then so advise the complainant.

b. If the fire marshal determines that an inspection is warranted, the fire marshal will so advise the county attorney, the requester and person(s) identified as the owner(s).

5.11(2) Cause to be inspected. The fire marshal shall then cause the inspection of the building to determine if:

a. By want of proper repair, or by reason of age and dilapidated condition, it is especially liable to fire and is so situated as to endanger other buildings, property or persons, or

b. It contains combustibles, explosives or flammable materials dangerous to the safety of any buildings, premises or persons.

5.11(3) Final decision. Upon completion of the inspection the fire marshal shall then decide if the building needs to be removed or repaired.

a. If the building complies with applicable laws or rules and no deficiencies are found, the fire marshal shall accordingly notify the county attorney, the owner and the requester.

b. If any deficiencies are found, and the building is within the corporate limits of a city, the fire marshal shall then notify the mayor and clerk of said city of the deficiencies and the need for repairs or removal.

c. If any deficiencies are found, and the building is within the corporate limits of a city, the fire marshal shall then identify specifically such deficiencies and prepare an order to correct or repair the deficiencies or remove or demolish the building. Such notice and order should be sent to the county attorney with a request that the notice and order be examined by the county attorney.

NOTE: An owner who receives an order from the fire marshal may appeal the order using procedures established in 661—Chapter 10.

5.11(4) *Verification of legal description.* The county attorney shall, upon receipt of the fire marshal's notice and order, verify the legal description and identification of the property owner and shall advise the fire marshal how to properly serve the order.

5.11(5) *Contents of order.* This order shall notify the owner of the building that the order becomes effective upon its receipt or issuance. The order shall also notify the owner that, within five days after the order's effective date, the owner may file a petition for review of the order in accordance with Iowa Code section 100.14.

5.11(6) *Who shall be served.* If the county attorney deems it appropriate, any occupants, lienholders or lessees shall be served with a copy of the order.

5.11(7) *Reasonable time to comply.* The order shall give the owner a reasonable time to comply with its mandate(s). The fire marshal shall determine what constitutes a reasonable time by considering the likelihood of fires, the possibility of personal injury or property loss, the cost, availability of materials and labor to correct, repair, remove or demolish the building and other reasonable, relevant information.

5.11(8) *Reinspection.* If the owner of the building elects not to challenge the fire marshal's order, the fire marshal shall then, at the end of the period during which compliance was required, conduct another inspection of the building.

a. If the fire marshal finds that the order has been complied with, the fire marshal shall notify the county attorney, owner and requester of this fact.

b. If the fire marshal finds that the order has not been complied with, the fire marshal will notify the county attorney of noncompliance.

NOTE: An owner who receives a notice of noncompliance from the fire marshal may appeal the notice using procedures established in 661—Chapter 10.

5.11(9) *Failure to comply.* Upon receipt from the fire marshal of the owner's failure to comply, the county attorney shall:

a. Institute the procedure necessary to subject the owner to a penalty of \$10 for each day the owner fails to comply, and

b. Confirm the legal description of the property, the owner's name and address, the alleged deficiencies of the building, that an inspection was conducted, that some deficiency was found, that the owner was properly served, notified and given an adequate opportunity to repair the deficiency, and that the deficiency has not been remedied and may, therefore, advise the fire marshal that the destruction is appropriate at this time.

5.11(10) *Final action taken.* The fire marshal, upon the advice of the county attorney, may repair, remove or destroy the building. Such destruction may occur by:

a. Permitting the local fire service to burn the building as a training exercise;

b. Asking for public bids on the building;

c. If significant costs are anticipated, the fire marshal may request funds from the Iowa executive council.

661—5.12(17A,80,100A) Sharing of insurance company information with the fire marshal. Insurance companies shall provide the specified information to the fire marshal as follows:

5.12(1) Whenever an insurance company has reason to believe that a fire loss insured by the company was caused by something other than an accident, said insurance company shall provide to the fire marshal, or some other agency authorized to receive such information under Iowa Code chapter 100A, all information and material possessed by said company relevant to an investigation of the fire loss or a prosecution for arson.

5.12(2) Whenever the fire marshal, or an agent or employee of the fire marshal, requests in writing that an insurance company provide information in its possession regarding a fire to the fire marshal, the insurance company shall provide all relevant information requested. Relevant information may include, but need not be limited to:

- a. Insurance policy information relating to a fire loss under investigation including information on the policy application.
- b. Policy premium payment records.
- c. History of previous claims made by the insured.
- d. Material relating to the investigation of the loss, including the statement of any person, proof of loss, and other information relevant to the investigation.

5.12(3) Unless otherwise expressly limited any request for information under this rule shall be construed to be a request for all information in the possession of an insurance company. Any information in the custody or control of any agent, employee, investigator, attorney or other person engaged by an insurance company, on a permanent or temporary basis, in the person's professional relationship to the insurance company shall be considered to be in the possession of the insurance company subject to this rule.

661—5.13(17A,80,100A) Release of information to an insurance company. An insurance company which has provided fire loss information to an authorized agency pursuant to Iowa Code section 100A.2 may request information relevant to said fire loss investigation from the fire marshal. If the insurance company has provided information to an authorized agency other than the fire marshal, the request shall include proof that information was provided. For purposes of this rule the term insurance company shall include an attorney, adjustor or investigator engaged by the company in reference to the particular fire loss involved in the request even though the attorney, adjustor or investigator is not a full-time employee of the insurance company. The attorney, adjustor or investigator shall provide the fire marshal with proof of authorization from the insurance company to act as its representative relative to the loss.

661—5.14(17A,80,100A) Forms. These rules require the use of the following forms that are available from the commissioner or the state fire marshal.

5.14(1) When an insurance company has reason to believe that a fire loss has occurred, the company shall notify the fire marshal on the form entitled "Insurance Form Number One."

5.14(2) Requests for information by the fire marshal, the fire marshal's agents or employees from an insurance company pursuant to Iowa Code section 100A.2 shall comply with the form entitled "Insurance Form Number Two."

5.14(3) Material requested on Insurance Forms Number One and Two shall carry a cover form which complies with "Insurance Form Number Three."

5.14(4) Request for information by an insurance company from the fire marshal shall comply with "Insurance Form Number Four."

661—5.15(17A,100) Waivers, variances, and exceptions. This rule outlines generally applicable standards and a uniform process for the granting of individual waivers from rules of the state fire marshal in situations where no other more specific procedure provides for waivers. To the extent another more specific provision of law governs the issuance of a waiver from a particular rule, the more specific provision shall supersede this rule with respect to any waiver from that rule.

"Rules of the state fire marshal" means any rules adopted pursuant to rule-making authority assigned to the fire marshal, including but not limited to rules adopted pursuant to Iowa Code section 100.1, 100.35, 100B.10, 100C.7, 101.1, 101.23, or 101A.5, or to implement any provision of Iowa Code chapter 100, 100A, 100B, 100C, 101, or 101A, or any other reference in an Iowa statute to rule making by the fire marshal or establishment of fire safety standards or requirements by the fire marshal.

NOTE: As of February 1, 2006, the following chapters are "rules of the state fire marshal": 661—Chapters 5, 51, 53, 205, 231, 251, 259, and 291.

“*Waiver*” or “*variance*” means an action by the fire marshal which suspends, in whole or in part, the requirements or provisions of a rule as applied to an identified person on the basis of the particular circumstances of that person. For simplicity, the term “waiver” shall include both a “waiver” and a “variance.”

5.15(1) Applicability of rule. The fire marshal may grant a waiver from a rule only if the fire marshal has jurisdiction over the rule and the requested waiver is consistent with applicable statutes, constitutional provisions, or other provisions of law. The fire marshal may not waive requirements created or duties imposed by statute.

5.15(2) Criteria for waiver or variance. In response to a petition completed pursuant to this rule, the fire marshal may, in the fire marshal’s sole discretion, issue an order waiving, in whole or in part, the requirements of a rule if the fire marshal finds, based on clear and convincing evidence, all of the following:

a. The application of the rule would impose an undue hardship on the person for whom the waiver is requested;

b. The waiver from the requirements of the rule in the specific case would not prejudice the substantial legal rights of any person;

c. The provisions of the rule subject to the petition for a waiver are not specifically mandated by statute or another provision of law; and

d. Substantially equal protection of public health, safety, and welfare will be afforded by a means other than that prescribed in the particular rule for which the waiver is requested.

5.15(3) Filing of petition. A petition for a waiver must be submitted in writing to the fire marshal as follows:

a. License application. If the petition relates to a license application, the petition shall be made in accordance with the filing requirements for the license in question.

b. Contested cases. If the petition relates to a pending contested case, the petition shall be filed in the contested case proceeding, using the caption of the contested case.

c. Other. If the petition does not relate to a license application or a pending contested case, the petition shall be submitted using a caption indicating the name of the entity or person for whom the waiver is requested and the location of property to which the proposed waiver would apply, if any.

d. File petition. A petition is deemed filed when it is received in the office of the state fire marshal. A petition should be sent or delivered to the Iowa State Fire Marshal, 401 S.W. 7th Street, Suite N, Des Moines, Iowa 50309.

5.15(4) Content of petition. A petition for waiver shall include the following information where applicable and known to the requester:

a. The name, address, and telephone number of the entity or person for whom a waiver is being requested; the case number of or other reference to any related contested case; and the name, address, and telephone number of the petitioner’s legal representative, if any.

b. A description of and citation to the specific rule from which a waiver is requested.

c. The specific waiver requested, including the precise scope and duration.

d. The relevant facts that the petitioner believes would justify a waiver under each of the four criteria described in subrule 5.15(2). This statement shall include a signed statement from the petitioner attesting to the accuracy of the facts provided in the petition, and a statement of reasons that the petitioner believes will justify a waiver.

e. A history of any prior contacts between the department of public safety or any other agency of the state of Iowa or political subdivision and the petitioner relating to the regulated activity or license affected by the proposed waiver, including a description of each affected license or certificate held by the requester, any formal charges filed, notices of violation, contested case hearings, or investigations relating to the regulated activity or license within the last five years.

f. Any information known to the requester regarding actions of the fire marshal in similar cases.

g. The name, address, and telephone number of any public agency or political subdivision which also regulates the activity in question or which might be affected by the granting of a waiver.

h. The name, address, and telephone number of any entity or person who would be adversely affected by the granting of a petition.

i. The name, address, and telephone number of any person with knowledge of the relevant facts relating to the proposed waiver.

j. Signed releases of information authorizing persons with knowledge regarding the request to furnish the department with information relevant to the waiver.

5.15(5) Additional information. Prior to issuing an order granting or denying a waiver, the fire marshal may request additional information from the petitioner relative to the petition and surrounding circumstances. If the petition was not filed in a contested case, the fire marshal may, on the fire marshal's own motion or at the petitioner's request, schedule a telephonic or in-person meeting between the petitioner and a representative or representatives of the fire marshal related to the waiver request.

5.15(6) Notice. The fire marshal shall acknowledge a petition upon receipt. The fire marshal shall ensure that, within 30 days of receipt of the petition, notice of the pending petition and a concise summary of its contents have been provided to all persons to whom notice is required by any provision of law, including the petitioner. In addition, the fire marshal may give notice to other persons. To accomplish this notice provision, the fire marshal may require the petitioner to serve the notice on all persons to whom notice is required by any provision of law, and provide a written statement to the department attesting that notice has been provided.

5.15(7) Hearing procedures. The provisions of Iowa Code sections 17A.10 to 17A.18A regarding contested case hearings shall apply to any petition for a waiver filed within a contested case, and shall otherwise apply to department proceedings for a waiver only when the department so provides by rule or order or is required to do so by statute.

5.15(8) Ruling. An order granting or denying a waiver shall be in writing and shall contain a reference to the particular person or legal entity and rule or portion thereof to which the order pertains, a statement of the relevant facts and reasons upon which the action is based, and a description of the precise scope and duration of the waiver if one is issued.

a. *Fire marshal discretion.* The final decision on whether the circumstances justify the granting of a waiver shall be made at the sole discretion of the fire marshal, upon consideration of all relevant factors. Each petition for a waiver shall be evaluated by the fire marshal based on the unique, individual circumstances set out in the petition.

b. *Burden of persuasion.* The burden of persuasion rests with the petitioner to demonstrate by clear and convincing evidence that the fire marshal should exercise discretion to grant a waiver of a rule.

c. *Narrowly tailored.* A waiver, if granted, shall provide the narrowest exception possible to the provisions of a rule.

d. *Administrative deadlines.* When the rule from which a waiver is sought establishes administrative deadlines, the fire marshal shall balance the special individual circumstances of the petitioner with the overall goal of uniform treatment of all similarly situated persons.

e. *Conditions.* The fire marshal may place on a waiver any condition that the fire marshal finds desirable to protect the public health, safety, and welfare.

f. *Time period of waiver.* A waiver shall not be permanent unless the petitioner can show that a temporary waiver would be impracticable. If a temporary waiver is granted, there is no automatic right to renewal. At the sole discretion of the fire marshal, a waiver may be renewed if the fire marshal finds that grounds for a waiver continue to exist.

g. Time for ruling. The fire marshal shall grant or deny a petition for a waiver as soon as practicable but, in any event, shall do so within 120 days of its receipt, unless the petitioner agrees to a later date. However, if a petition is filed in a contested case, the fire marshal shall grant or deny the petition no later than the time at which the final decision in that contested case is issued.

h. When deemed denied. Failure of the fire marshal to grant or deny a petition within the required time period shall be deemed a denial of that petition by the fire marshal. However, the fire marshal shall remain responsible for issuing an order denying a waiver.

i. Service of order. Within seven days of its issuance, any order issued under this rule shall be transmitted to the petitioner or the person to whom the order pertains, and to any other person entitled to such notice by any provision of law.

5.15(9) All orders granting or denying a waiver petition shall be indexed, filed, and available for public inspection as provided in Iowa Code section 17A.3. Petitions for a waiver and orders granting or denying a waiver petition are public records under Iowa Code chapter 22. Some petitions or orders may contain information the fire marshal is authorized or required to keep confidential. The department may accordingly redact confidential information from petitions or orders prior to public inspection.

5.15(10) Summary reports. The fire marshal shall provide information regarding requests for waivers received pursuant to this rule to the agency rules administrator for inclusion in summary reports of requests for waivers as provided for in 661—subrule 10.222(10).

5.15(11) Cancellation of a waiver. A waiver issued by the fire marshal pursuant to this rule may be withdrawn, canceled, or modified if, after appropriate notice and hearing, the fire marshal issues an order finding any of the following:

a. The petitioner or the person who was the subject of the waiver order withheld or misrepresented material facts relevant to the propriety or desirability of the waiver; or

b. The alternative means for ensuring that the public health, safety and welfare will be adequately protected after issuance of the waiver order have been demonstrated to be insufficient; or

c. The subject of the waiver order has failed to comply with all conditions contained in the order.

5.15(12) Violations. Violation of a condition in a waiver order shall be treated as a violation of the particular rule for which the waiver was granted. As a result, the recipient of a waiver under this chapter who violates a condition of the waiver may be subject to the same remedies or penalties as a person who violates the rule at issue.

5.15(13) Defense. After the fire marshal issues an order granting a waiver, the order is a defense within its terms and the specific facts indicated therein only for the person to whom the order pertains in any proceeding in which the rule in question is sought to be invoked.

5.15(14) Appeals. Decisions of the fire marshal pursuant to this rule may be appealed to the commissioner of public safety. Provision for appeals of proposed decisions in contested case proceedings shall apply, as provided in rule 661—10.327(17A).

5.15(15) Judicial review. Judicial review of the department's decision to grant or deny a waiver petition may be taken in accordance with Iowa Code chapter 17A.

5.15(16) Sample petition for waiver. A petition for waiver filed in accordance with this chapter must meet the requirements specified herein and must either be submitted on a completed waiver request form provided by the fire marshal or substantially conform to the following form:

BEFORE THE IOWA DEPARTMENT OF PUBLIC SAFETY,
STATE FIRE MARSHAL DIVISION

| | | |
|---|---|---------------------------------|
| Petition by (name of petitioner) for the waiver/variance of (insert rule citation) relating to (insert the subject matter). | } | PETITION FOR WAIVER/VARIANCE |
|---|---|---------------------------------|

1. Provide the name, address, and telephone number of the petitioner (person asking for a waiver or variance). Also provide the name, address, and telephone number of the petitioner’s legal representative, if applicable, and a statement indicating the person to whom communications concerning the petition should be directed.
 2. Describe and cite the specific rule from which a waiver is requested.
 3. Describe the specific waiver requested, including the precise scope and time period for which the waiver will extend.
 4. Explain the relevant facts and reasons that the petitioner believes justify a waiver. Include in the answer all of the following:
 - Why applying the rule would result in undue hardship to the petitioner;
 - Why waiving the rule would not prejudice the substantial legal rights of any person;
 - Whether the provisions of the rule subject to the waiver are specifically mandated by statute or another provision of law; and
 - How substantially equal protection of public health, safety, and welfare will be afforded by a means other than that prescribed in the particular rule for which the waiver is requested.
 5. Provide a history of any prior contacts between the department, other departments or agencies of the state of Iowa, or political subdivisions and petitioner relating to the regulated activity or license that would be affected by the waiver. Include a description of each affected license held by the petitioner, any formal charges filed, any notices of violation, any contested case hearings held, or any investigations related to the regulated activity, license, registration, certification, or permit.
 6. Provide information known to the petitioner regarding the fire marshal’s action in similar cases.
 7. Provide the name, address, and telephone number of any public agency or political subdivision that also regulates the activity in question or that might be affected by the granting of the petition.
 8. Provide the name, address, and telephone number of any person or entity that would be adversely affected by the granting of the waiver.
 9. Provide the name, address, and telephone number of any person with knowledge of the relevant facts relating to the proposed waiver.
 10. Provide signed releases of information authorizing persons with knowledge regarding the request to furnish the fire marshal with information relevant to the waiver.
- I hereby attest to the accuracy and truthfulness of the above information.

| | |
|---------------------------------|---------------|
| _____ Petitioner’s signature | _____ Date |
|---------------------------------|---------------|

This rule is intended to implement Iowa Code section 17A.22.

661—5.16(100) Alternate requirements. With the exception of a health care facility subject to the requirements of 661—Chapter 205, a building or facility shall be deemed to be in compliance with the requirements established in this chapter if all of the following conditions are met:

1. The building or facility is in a local jurisdiction which has adopted a local fire ordinance which adopts by reference the International Fire Code, 2000 edition, 2003 edition, or 2006 edition, published by the International Code Council, 5203 Leesburg Pike, Suite 600, Falls Church, VA 22041.

2. The local fire ordinance is enforced through a process of review and approval of construction plans for compliance with the local fire ordinance and a process of regular inspections for compliance with the local fire ordinance.

3. The building or facility is subject to regular fire safety inspections.

4. The local jurisdiction has verified, during its most recent inspection, including any follow-up inspections, that the building or facility is in compliance with the local fire ordinance.

NOTE: Provisions regarding the storage, handling, or use of flammable and combustible liquids are not covered by this chapter. Notwithstanding any conflicting provisions contained in the International Fire Code, compliance with the provisions of 661—Chapter 51 is required at any location in which flammable or combustible liquids are stored, handled, or used.

661—5.17 to 5.34 Reserved.

661—5.35(100) Standards for automatic fire extinguishing systems. The following standards are adopted as the requirements for automatic fire extinguishing systems:

- 5.35(1)** NFPA 11, Standards for Low-, Medium-, and High-Expansion Foam, 2005 edition.

- 5.35(2)** NFPA 12, Standard on Carbon Dioxide Extinguishing Systems, 2005 edition.

- 5.35(3)** NFPA 12A, Halon 1301 Fire Extinguishing System, 2004 edition.

- 5.35(4)** NFPA 13, Installation of Sprinkler Systems, 2002 edition.

- 5.35(5)** NFPA 13D, Sprinkler Systems in One- and Two- Family Dwellings and Manufactured Homes, 2002 edition.

- 5.35(6)** NFPA 13R, Sprinkler Systems in Residential Occupancies up to and Including Four Stories in Height, 2002 edition.

- 5.35(7)** NFPA 14, Standard for the Installation of Standpipe and Hose Systems, 2003 edition.

- 5.35(8)** NFPA 15, Water Spray Fix System for Fire Protection, 2002 edition.

- 5.35(9)** NFPA 16, Standard for Installation of Foam Sprinkler and Foam Water Spray, 2003 edition.

- 5.35(10)** NFPA 17, Standard for Dry Chemical Extinguishing Systems, 2002 edition.

- 5.35(11)** NFPA 17A, Standard for Wet Chemical Extinguishing Systems, 2002 edition.

- 5.35(12)** NFPA 20, Installation of Stationary Pumps, 2003 edition.

- 5.35(13)** NFPA 22, Standard for Water Tanks for Private Fire Protection, 2003 edition.

- 5.35(14)** NFPA 24, Standard for the Installation of Private Fire Service Mains and Their Appurtenances, 2002 edition.

- 5.35(15)** NFPA 25, Standard for the Inspection, Testing, and Maintenance of Water-Based Fire Protection Systems, 2002 edition.

- 5.35(16)** NFPA 72, National Fire Alarm Code, 2002 edition.

- 5.35(17)** NFPA 96, Standard for Ventilation Control and Fire Protection of Commercial Cooking Operations, 2004 edition.

- 5.35(18)** NFPA 750, Standard on Water Mist Fire Protection System, 2006 edition.

- 5.35(19)** NFPA 2001, Standard on Clean Agent Fire Extinguishing Systems, 2004 edition.

661—5.36 to 5.39 Reserved.

661—5.40(17A,80,100) Portable fire extinguishers—generally. Except as otherwise provided in rules for a specific occupancy, portable fire extinguishers shall comply with NFPA 10, 2006 edition.

5.40(1) Portable halogenated fire extinguishers. Approved portable halogenated fire extinguishers may be permitted for use in electrical, telephone, or computer equipment areas.

5.40(2) Reserved.

661—5.41(17A,80,100) Halon fire extinguishing systems—generally. Rescinded IAB 7/19/06, effective 7/1/06.

661—5.42(100) Cellulose insulation. This rule shall apply to all cellulose insulation loose-fill or spray applied which is used, sold or offered for sale in Iowa after December 8, 1988.

Cellulose insulation shall consist of virgin or recycled wood-based cellulosic fiber and may be made from related paper or paperboard stock, excluding contaminated materials and extraneous foreign materials such as metals and glass which may reasonably be expected to be retained in the finished product. Suitable chemicals may be introduced to improve flame resistance processing and handling characteristics. The particles shall not be so fine as to create a dust hazard, and the added chemicals shall not create a health hazard. The materials used must be capable of proper adhesion to the additive chemicals.

5.42(1) Cellulose insulation shall comply with the requirements of the Consumer Product Safety Commission, Interim Safety Standard for Cellulose Insulation, 16 CFR Part 1209 (1-1-87 edition).

5.42(2) Notwithstanding the requirements of 16 CFR 1209.33, the manufacturer shall contract with an independent National Voluntary Laboratory Accreditation Program (NVLAP) laboratory, administered by the United States Department of Commerce, National Bureau of Standards, which is approved to perform the tests necessary for compliance with the standards.

a. The manufacturer shall include in the laboratory service a follow-up inspection program which will include at least six unannounced inspections per year.

b. The testing laboratory shall obtain enough samples from production and inventory and may also purchase sufficient bags to ensure that the samples are a representative cross section of the material being tested.

c. In the event that samples obtained by the testing laboratory fail to meet the test standards, the manufacturer, with the approval of the testing laboratory, shall take whatever action is necessary to correct the production process and bring the product into compliance.

5.42(3) In addition to the labeling requirements of 16 CFR 1209.9, the containers of cellulose insulation shall indicate that a follow-up inspection program is being carried out.

661—5.43 to 5.49 Reserved.

These rules are intended to implement Iowa Code chapters 100 and 100A.

[Filed 6/30/75]

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[Filed emergency 6/27/06—published 7/19/06, effective 7/1/06]

MEANS OF EXIT

661—5.50(100) General requirements. The following requirements apply to all occupancies unless excluded in or in conflict with the rules for a specific occupancy.

5.50(1) An approved type of fire extinguisher shall be provided on each floor, so located as to be accessible to the occupants and spaced so no person must travel more than 75 feet from any point to reach the nearest fire extinguisher.

5.50(2) All fire and life safety equipment or devices shall be regularly and properly maintained in an operable condition at all times in accordance with nationally recognized standards. Fire and life safety equipment includes fire extinguishing equipment; alarm systems; doors and their appurtenances; electric service, including appliances, cords and switches; heating and ventilation equipment; sprinkler systems; and exit facilities.

5.50(3) Excessive storage of combustible or flammable materials such as papers, cartons, magazines, paints, old clothing, furniture and similar materials shall not be permitted.

5.50(4) Food preparation facilities shall be protected and maintained in accordance with NFPA 96, Standard for Ventilation Control and Fire Protection of Commercial Cooking Operations, 2004 edition.

5.50(5) Automatic sprinkler system. An approved automatic sprinkler system shall be installed in every story or basement of a building when the floor area exceeds 1,500 square feet and there is not provided at least 20 square feet of opening entirely above the adjoining ground level in each 50 lineal feet or fraction thereof of exterior wall in the story or basement on at least one side of the building. Openings shall have a minimum dimension of not less than 30 inches. Such openings shall be accessible to the fire department from the exterior.

When openings in a story are provided on only one side and the opposite wall of such story is more than 75 feet from such openings, the story shall be provided with an approved automatic sprinkler system, or openings as specified above shall be provided on at least two sides of an exterior wall of the story.

If any portion of a basement is located more than 75 feet from openings required in this subrule, the basement shall be provided with an approved automatic sprinkler system.

EXCEPTION: Dwellings, lodging houses, private garages, sheds and agricultural buildings are not subject to subrule 5.50(5).

5.50(6) Underground structures. Underground structures which exceed 1,500 square feet per floor shall be protected throughout by an approved automatic sprinkler system.

Exits from underground structures involving upward travel, such as ascending stairs or ramps, shall be separated from main floor areas. Stair towers of two-hour construction shall be provided from underground structures when serving up to two floors. Stair towers of four-hour construction shall be provided from underground structures serving more than two floors.

Outside smoke venting shall be provided to prevent the exits from becoming charged with smoke from any fire in the area served by the exits.

Emergency lighting shall be provided for all underground structures.

661—5.51(100) Exits. NFPA 101, 2000 edition, Chapter 7, is adopted as the general rules establishing exit requirements with the following amendment:

Amend Section 7.2.1.7 as follows:

7.2.1.7 Panic Hardware and Fire Exit Hardware. Panic hardware shall be provided on each required exit door in any assembly occupancy, educational occupancy, or day care occupancy with an occupant load of 50 or more.

NOTE: When exit requirements for a specific form of occupancy are in conflict with this rule, the requirements for the specific occupancy apply.

This rule is intended to implement Iowa Code section 100.35.

661—5.52(100) Sprinklers in elevators.

5.52(1) *Sprinklers in hoistways.* When a sprinkler is installed in a hoistway, the installation shall comply with rule 875—73.25(89A), adopted by the elevator safety board.

5.52(2) *Elevator machine rooms.*

a. Sprinklers are not required in elevator machine rooms, unless required by another provision of law, such as a local fire ordinance or an applicable federal regulation. When a sprinkler is installed in an elevator machine room, the installation shall comply with rule 875—73.25(89A).

b. Storage of any equipment or materials, other than equipment directly related to elevator operation, shall not be allowed in elevator machine rooms.

c. Each elevator machine room shall have a smoke detector and a heat detector, each of which shall be connected to the building's fire alarm system.

d. Security shall be maintained in elevator machine rooms in accordance with the provisions of the applicable standards adopted by the elevator safety board, as set forth in rule 875—72.1(89A). “Security” includes, but is not limited to, restriction of access to machine rooms to authorized personnel only and limitations on the duplication and distribution of keys to machine rooms. If none of the standards adopted in rule 875—72.1(89A) apply, then access to elevator machine rooms shall be limited to authorized personnel only.

This rule is intended to implement Iowa Code sections 100.1 and 100.35.

661—5.53 to 5.99 Reserved.

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[Filed 6/30/61]

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LIFE SAFETY REQUIREMENTS FOR EXISTING BUILDINGS**661—5.100(100) Exits and escapes.**

5.100(1) General. All buildings must meet the requirements set forth in General Rules and Regulations for Means of Exit with the following exceptions permitted for existing buildings. The purpose of rules 5.100(100) to 5.105(100) is to provide a reasonable degree of safety to persons occupying existing buildings that do not conform with the minimum requirements of this code by providing for reasonable and equivalent safety.

EXCEPTION: One- and two-family dwellings, private garages, carports, sheds and agricultural buildings.

5.100(2) Effective date. Existing buildings will be classified as those constructed prior to June 2, 1983.

5.100(3) Change of occupancy classification. A change from one occupancy classification to another, in any building or structure, whether necessitating a physical alteration or not, may be made only if such building or structure conforms with the requirements of rules applying to new buildings or the proposed new use.

5.100(4) Provisions of this chapter shall apply to existing buildings as well as new, except that the authority having jurisdiction may permit conditions legally in existence at the time of the adoption of these rules.

Those buildings, structures or facilities not legally in existence or not meeting these rules at the time of their adoption shall within a reasonable period designated by the state fire marshal or the authority having jurisdiction complete the work necessary.

5.100(5) Rescinded IAB 9/16/92, effective 11/1/92.

5.100(6) Rescinded IAB 2/15/06, effective 2/1/06.

This rule is intended to implement Iowa Code section 100.35.

661—5.101(100) Exits.

5.101(1) *Number of exits.* Every floor above the first story used for human occupancy shall have access to at least two separate exits, one of which may be an exterior fire escape. Subject to the approval of the authority having jurisdiction, an approved ladder device may be used in lieu of a fire escape when the construction feature or location of the building on the property make the installation of a fire escape impracticable.

An exit ladder device may be used only when:

- a. It serves an occupant load of ten or less or a single dwelling unit or guest room.
- b. The building does not exceed three stories in height.
- c. The access is adjacent to an opening as specified for emergency egress or rescue from a balcony.
- d. It does not pass in front of any building opening below the unit being served.